



Department of Energy
Acquisition Regulation

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ACQUISITION LETTER

The Procurement Executive is issuing this Acquisition Letter through a delegation from the Secretary and under the authority of the Federal Acquisition Regulation (FAR), Section 1.301(a)(2).

Subject: Small Business Programs

References:

| | |
|---------------------|---|
| FAR Subpart 19.5 | Set-Asides for Small Business |
| FAR Subpart 19.7 | Small Business Subcontracting Program |
| FAR Subpart 19.8 | Contracting with the Small Business Administration (the 8(a) Program) |
| FAR Subpart 19.9 | Very Small Business Pilot Program |
| FAR Subpart 19.10 | Small Business Competitiveness Demonstration Program |
| FAR Subpart 19.11 | Price Evaluation Adjustment for Small Disadvantaged Business Concerns |
| FAR Subpart 19.12 | Small Disadvantaged Business Participation Program |
| FAR Subpart 19.13 | Historically Underutilized Business Zone (HUBZone) Programs |
| | |
| DEAR Subpart 919.8 | Contracting with the Small Business Administration (the 8(a) Program) |
| DEAR Subpart 919.5 | Set-Asides for Small Business |
| DEAR Subpart 919.7 | Subcontracting with Small Business, Small Disadvantaged Business, and Women-Owned Small Business Concerns |
| DEAR Subpart 919.70 | Mentor Protege Program Guidance |
| DEAR 970.15407-2 | Make or Buy Program |
| DEAR 970.5204-76 | Make or Buy Program |
| | |
| OFPP Letter 99-1 | Small Business Procurement Goals |

When is this Acquisition Letter (AL) Effective?

This AL is effective 10 business days from the date of issuance.

When Does this AL Expire?

This AL remains in effect until superseded or canceled. This AL supersedes AL 96-07, dated July 24, 1996.

Who is the Point of Contact?

Contact Robert Webb of the Office of Procurement and Assistance Policy at (202) 586-8264, or at Robert.Webb@pr.doe.gov.

Visit our website at www.pr.doe.gov for information on Acquisition Letters and other policy issues.

What is the Purpose of this AL?

The purpose of this AL is to make available to Department of Energy (DOE) contracting officers, and through them to contractors which manage and operate major DOE sites and facilities, guidance and administrative tools to most effectively utilize small businesses, small disadvantaged businesses, including 8(a) contractors, woman-owned businesses, and HUBZone small businesses in the award of DOE prime contracts and subcontracts under contracts for the management and operation of major DOE sites and facilities.

This AL is divided into two parts: Section I applies in the award of prime contracts by DOE; Section II applies to the award of subcontracts under contracts for the management and operation of major DOE sites and facilities.

The Department's efforts in this regard are in fulfillment of the Federal policies to offer maximum practicable opportunities to small businesses to expand the industrial base and increase competition in the Federal marketplace.

What is the Background?

Since 1991 DOE has been advised by the Office of Federal Procurement Policy (OFPP) to include the contracts of its management and operating contractors in establishing goals with the Small Business Administration and reporting of accomplishments for socio-economic programs. This reflected the unique nature and purpose of the management and operating contracts and the fact that approximately three-quarters of DOE's budget goes to those contractors. Recently, the OFPP rescinded its previous direction. As a result, the Department's performance for attaining socioeconomic accomplishments will now be based solely on Federally awarded prime contract awards. For the last four years, the average value of prime contract awards to small businesses represented approximately three percent of DOE's total procurement budget.

Further on October 8, 1999, the Office of Federal Procurement Policy issued Policy Letter 99-1, Small Business Procurement Goals (64 FR 54918), to replace an earlier Policy Letter 91-1. The new Policy Letter establishes Government-wide goals for contracting with small business, small disadvantaged business, women-owned small businesses, and HUBZone small businesses. The aggregate government-wide goal for awards to all small businesses was increased to 23%. The Department needs to exercise all appropriate means to improve its performance in making awards to small businesses in order to help achieve the Government-wide goal to counteract the impact of the recent OFPP decision, and to ensure that small business receives a fair portion of DOE's business.

On February 11, 2000, the Secretary of Energy signed a memorandum providing the Department's strategic vision for maximizing small business participation. One of the significant initiatives announced by the Secretary is the creation of a Small Business Committee as part of the Field Management Council. The Committee reports to the Secretary and the Deputy Secretary and is co-chaired by the Director of the Office of Economic Impact and Diversity, and the Director of the Office of Procurement and Assistance Management. The Secretary has directed the Committee to develop and monitor implementation of small business strategies throughout the DOE complex.

Although the Department has provided over \$3 billion in combined prime and subcontracting opportunities to small businesses, there is more that can be achieved. For fiscal year 2000, the Department's combined prime and subcontracting goal is \$3.3 billion, including \$757.6 million in prime contracting to small business as assigned by the Small Business Administration.

This Acquisition Letter is but one of many initiatives to maximize small business participation. Other initiatives include: (1) developing plans for forging innovative partnerships with small business concerns; (2) improving the conduct of small business programs within the Department; (3) enhancing program, field office and contractor small business functions; (4) improving monitoring and tracking of prime contracting and subcontracting performance; and (5) promoting increased outreach initiatives to the small business community.

Guidance Included in this Acquisition Letter

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I. What Tools are Available to DOE Contracting Activities to Increase Prime Contract Awards to Small Businesses?

To support the Department's responsibility to award a fair proportion of DOE prime contract awards to small businesses, Heads of Contracting Activities shall ensure that the following policies and procedures are used to the maximum extent feasible.

A. REVIEW OF EXISTING PROGRAMS/PROCEDURES

| AMOUNT | QUICK REFERENCE OF GENERAL SET-ASIDE REQUIREMENTS |
|------------------|--|
| < \$2,500 | While unrestricted, may be awarded to a single small business. (Micro Purchases) |
| \$2501-\$100,000 | Reserved exclusively for small business and shall be set aside, unless there is not a reasonable expectation of obtaining offers from two or more responsible small business concerns. |
| > \$100,000 | Required small business set-aside where there is reasonable expectation of obtaining offers from two or more responsible small business concerns. |

1. Set-Asides: The following set-asides are required or authorized by Federal law and/or regulation. Awards made pursuant to these processes fulfill Federal competition requirements.

- a. *Awards to 8(a) Firms.* For procurements under \$3 million (\$5 million for manufacturing standard industrial classifications) where an 8(a) certified firm can be identified with the expectation that the award would be at a fair market price, an award may be made noncompetitively to an 8(a). If the procurement is valued in excess of \$3 million (\$5 million for manufacturing) and two or more 8(a) firms can be so identified, the procurement should be set aside for competition among 8(a) firms.
- b. *Memorandum of Understanding between DOE and the Small Business Administration (SBA).* Contracting activities may make awards under the 8(a) program with DOE contracting officers signing on behalf of SBA. This delegated signature authority saves time and effort in completing the award between DOE and SBA and the subcontract between SBA and the selected 8(a) firm (refer to AL-98-09, dated June 26, 1998).

- c. *Set-Asides for Small Business.* Procurements valued in excess of \$2,500 are to be set-aside for competition where there are two or more small businesses available to perform a requirement. This obligation also applies to purchase card transactions.
- d. *Set-Asides for HUBZone Small Business Concerns.* Where there is a reasonable expectation that proposals will be received from two or more small businesses certified as Historically Underutilized Business Zone concerns and the award would be made at a fair market price, the FAR requires that the award be set aside for HUBZone small business concerns.
- e. *Set-Asides for Very Small Businesses.* Under a statutorily directed pilot program purchases valued between \$2,500 to \$50,000 must be set aside for very small businesses (those businesses with no more than 15 employees and average annual receipts not exceeding \$1 million). This pilot program applies to supplies procured by DOE offices located in and to services performed in designated Small Business Administration districts (see FAR 19.902). Within this dollar range, awards may be made still to 8(a) firms that are not very small businesses.
- f. *Targeted Industry Categories Under Small Business Competitiveness Demonstration Program.* DOE is a participating agency and is responsible for increasing small business participation in the following SIC codes: 8731 (AG93, AG13, AZ11, AG83, R415), 4959(F108), 8742(R405), 8732(R419), 3823(7042), and 3825(6625).

2. Other Forms of Preference

- a. *Price Preferences for Small Disadvantaged Businesses.* If a procurement is not otherwise set aside, price preferences may be used to facilitate an award to certified small disadvantaged businesses where the acquisition is for items or services under certain Standard Industrial Codes or HUBZone small business concerns or to a firm that is both. For small disadvantaged businesses the current 10% price preference is known as a "price evaluation adjustment."

For HUBZone small business concerns, the 10% price preference is known as a "price evaluation preference." Where a firm is a HUBZone small business concern that is also a small disadvantaged business competing for work in one of the designated Standard Industrial Codes, it is entitled to the 20% price evaluation preference which results from the combining of these two preferences.

- b. *Evaluation Criterion.* Procurements valued in excess of \$500,000 (\$1,000,000 for construction) conducted under competitive procedures must contain an evaluation criterion or subcriterion to encourage increased subcontracting opportunities for small and small disadvantaged businesses. *Use of this technique is to be applied specifically to DOE major site and facility contracts to encourage small business participation in subcontracts, and also to encourage small business participation as prime contract team members.* A small disadvantaged business that does not claim the price evaluation adjustment is entitled to consideration under this evaluation criterion.

B. INCREASED OUTREACH ACTIVITIES

DOE small business representatives, contracting personnel, and program and technical personnel involved in the acquisition process should maximize the use of the Internet, publication of notices in relevant industry publications, the conducting of educational programs and practical workshops, and use of any other appropriate means to identify and inform small businesses of the work performed by the Department and its contractors. This would include how to do business with DOE, what contracting and subcontracting opportunities are available, how to obtain copies of solicitations, how to respond to DOE solicitations, how to become certified as a small disadvantaged business concern with SBA and any other information that may aid small businesses in competing for and performing contracts for DOE or subcontracts under contracts with DOE.

C. SMALL BUSINESS REVIEW

1. In addition to review of procurements by small business representatives, procurement directors should be personally involved in assessing the potential of setting aside any procurement above the Simplified Acquisition Threshold for small business, 8(a) firms, or HUBZone firms.
2. If a planned procurement valued in excess of \$3 million has not been set-aside for award to a small business, 8(a) firm, or HUBZone firm after the initial review required by FAR 19.501 and the personal review of the Procurement Director, notice shall be provided electronically to the Headquarters Office of Small Disadvantaged Business Utilization (OSDBU). Procurement actions which are supported by a justification and approval for use of other than full and open competition as described in FAR Sections 6.303 and 6.304," do not require OSDBU review.

☛ That notice shall contain the following information: copies of the procurement request and the statement of work; the source list; and a statement of the reason(s) it cannot be set-aside. Certain transactions, e.g., the placing of orders under FSS contracts and the issuance of individual task orders under task order contracts are not subject to this review.

- OSDBU will review or work through the Cognizant Small Business Program Manager within seven (7) business days to challenge the acquisition plan to the cognizant Head of Contracting Activity (HCA). If a notice of challenge is not entered within the that time, or if the Director of the Office of Small and Disadvantaged Business Utilization affirms the decision, the procurement should proceed as originally planned.
- If, however, a challenge is entered, the HCA shall resolve the matter within three (3) business days unless otherwise extended for good cause. At offices where a resident SBA Procurement Center Representative (PCR) resides, the review by OSDBU and the SBA-PCR may be concurrent.

D. CONSOLIDATING REQUIREMENTS

A FAR Interim Rule (FAC 97-15) was published on December 27, 1999 (at 64 FR 72414) to implement statutory controls and SBA regulatory requirements concerning "contract bundling" (i.e., consolidation of requirements – see 64 FR 57366, October 25, 1999). Several new responsibilities have been established and can be found at FAR Parts 7, 10, 15 and 19. While consolidating requirements may be deemed more administratively efficient and may result in cost savings, care needs to be exercised to ensure that the advantages of combining several contract requirements into a single award is balanced against the disadvantages and reduced potential for small business set-asides. For example, "bundled" awards may be appropriate when necessary to support specific technical, quality, or design requirements. However, "bundled" awards may reduce contractor focus, reduce competition in general, and, more specifically, result in fewer competitive opportunities for small businesses.

In those cases in which the requirements are bundled, special attention should be given to the opportunity for small business participation in subcontracting.

- Contracting Officers shall examine any acquisition plan or procurement request which anticipates several small contract requirements being combined into a single large contract, to ensure the proposed award provides a healthy competitive environment to support the Department's small business program objectives.
- Contract requirements should be structured to facilitate competition by and among small business concerns.
- Teaming arrangements for bundled requirements should be encouraged so that small businesses are not excluded from competing as prime contractors.
- If you cannot set aside a consolidated procurement for small business or 8(a) or HUBZone 8(a), rethink your acquisition strategy.

E. USE OF GSA FEDERAL SUPPLY SCHEDULES

The recent changes in policy for the use of the General Service Administration's (GSA) Federal Supply Schedule (FSS) have provided Contracting Officers with potent tools for the streamlined processing of requirements for hundreds of thousands of supplies and, increasingly, services. GSA and SBA have recognized the potential impact of the new schedule procedures on the small business community. *Starting in fiscal year 1999, award of orders under GSA schedules to small businesses are counted as DOE accomplishments for goaling purposes.* These changes also give Contracting Officers an opportunity to provide customers with a simplified and streamlined vehicle for achieving their Small Business Goals. The rules for buying under FSS are in FAR Subpart 8.4. Basically, if an acquisition is expected to exceed the micro-purchase threshold, the Contracting Officer must make a best value award from among at least three schedule contractors.

Although a majority of vendors on the schedules are in fact small business suppliers, the orders placed by Federal agencies with FSS vendors are frequently placed with other than small businesses. While FAR 8.404(a) notes that the small business provisions of Part 19 do not apply *per se* to orders under the schedules, there are additional techniques to increase small business participation which the Department will use when filling requirements from a FSS:

- To the maximum extent possible, FSS order competitions should be targeted to small business firms. Contracting Officers should work with requestors to identify three or more small businesses that hold relevant FSS contracts.
- FSS order competitions should be further limited, when appropriate, to specific categories e.g. woman-owned small businesses or small disadvantaged businesses.
- For micropurchases (orders < \$2,500), small businesses should be targeted. For orders above the micropurchase threshold, competitions should be targeted at small business firms.

F. AWARD OF MULTIPLE AWARD CONTRACTS

Agencies use ID/IQ task order contracts to fill recurring requirements for services. The size and scope of these contracts can present obstacles for small businesses who wish to compete, even though these firms have demonstrated their ability to be competitive in providing professional and technical services. Accordingly, solicitations for multiple award contracts (MACs) should be structured in such a manner that will guarantee small and small disadvantaged business firms an opportunity to win prime contracts, which then will allow them to compete for individual orders under the contracts. The following techniques should be applied when using MACs to fill program requirements:

- Contracting Officers must work closely with program officials and the small business representative regarding the planning of multiple award contracts so small and small disadvantaged business opportunities can be identified early in the acquisition planning process. Business strategies such as teaming arrangements should be discussed in an effort to maximize opportunities for these firms. Teaming arrangements not only increase business opportunities for small and small disadvantaged businesses, but also expand the skill mix of the team.
- Total set-aside: Multiple award contracts should be set-aside exclusively for competition among small businesses, to the greatest extent practicable.
- Partial set-aside: Where a total set-aside is not practicable, consideration should be given to identifying opportunities for an entire component of the statement of work to be set-aside for competition among small businesses.
- Where a total or partial set-aside is not feasible, consideration should be given to reserving and specifying in the solicitation, a certain number of awards for small businesses.

II

What Tools are Available to DOE Contractors to Increase Subcontract Awards to Small Businesses?

Heads of Contracting Activities shall ensure that contractor purchasing systems of contractors for the management and operation of major DOE sites and facilities include effective small business advocacy programs to support the Department's responsibility to award a fair proportion of DOE appropriated dollars to small businesses.

Additionally, Contracting Officers should meet periodically with directors of contractor purchasing to review the status of the contractor's performance against its Small Business Subcontracting Plan as implemented by the clause and FAR Subpart 19.7 to ensure the maximum practicable utilization of small businesses in Government contracts, including the contractor's attainment of negotiated subcontracting goals.

Contracting Officers should encourage contractors to adapt the tools in paragraphs B, E, and F of Section I of this Acquisition Letter and to take advantage of the following tools in Section II of this Acquisition Letter:

A. MAKE OR BUY PROGRAM

DOE contractors should use their "Make or Buy" program as a tool to define appropriate opportunities for contracting out work that will not cost more or compromise control of work. Work to be contracted out may lend itself to setting aside opportunities for award to small businesses or 8(a) firms. Contracting Officers will provide a copy of the contractor's "Make or Buy" plan to the DOE Small Business Program Manager.

B. CONSOLIDATION OF REQUIREMENTS

Contracting Officers will assure that the contractor's purchasing system and methods provide for a special internal review of consolidated requirements where it is unlikely that small businesses will be able to compete.

C. 8(a) PILOT PROGRAM

Contractors responsible for the management or operation of DOE sites and facilities are authorized to award subcontracts with a value of \$5 million or less for manufacturing standard industrial classifications and \$3 million or less for all other acquisitions on a noncompetitive basis to firms certified as participants by the Small Business Administration under its 8(a) program. Contractors may also set-aside for competition among 8(a) firms requirements in excess of those thresholds.

If such a program is instituted, the contractor shall assure that awards are to be made at fair market prices and are identified as awards to 8(a) firms under the reporting provisions of the Small Business Subcontracting Plan clause. A special effort may be made to identify and make awards to 8(a) firms in HUBZones. If such a program is instituted, the contractor shall assure that awards are to be made at fair market prices.

D. DISCRETIONARY CONSTRUCTION CLASS SET-ASIDE

Contractors responsible for the management or operation of DOE sites and facilities are authorized to set aside general construction requirements valued at \$3 million or less for small business on a class basis.

E. HUBZone SET-ASIDE

Contractors responsible for the management and operation of DOE sites and facilities are authorized to use HUBZone set aside and HUBZone sole source procurement techniques in the award of subcontracts under conditions similar to those applicable to the award of Federal prime contracts.

F. SMALL DISADVANTAGED BUSINESS AND SMALL WOMAN-OWNED BUSINESS EVALUATION PREFERENCE

Contractors responsible for the management or operation of DOE sites and facilities are authorized provide for an evaluation criterion that reflects a preference in the award of subcontracts to firms that propose to make significant use of small disadvantaged business or small woman-owned business in the performance of the proposed subcontract. Any such representation must be substantiated by a credible plan to establish its validity and may provide for damages for failure to achieve the represented level of involvement.

G. DISCRETIONARY \$100,000 SET-ASIDE FOR SMALL BUSINESS

Contractors responsible for the management and operation of DOE sites and facilities are authorized to set aside purchases valued up to \$100,000 for award to small businesses and to make purchases valued up to \$50,000 on a sole source basis to small businesses. If such programs are instituted, the contractor shall assure that awards are to be made at fair market prices.

H. DOE MENTOR PROTEGE PROGRAM

Contractors responsible for the management and operation of DOE sites and facilities may enter into Mentor-Protege agreement with small businesses, small disadvantaged businesses, including 8(a) concerns, and woman-owned businesses to enhance the commercial viability of such businesses.